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Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

John Michael McLeod,
Petitioner,

v.

MICHIGAN DEPARTMENT OF TREASURY
Respondent,

On Writ Of Certiorari to
The Supreme Court of Michigan

BRIEF FOR THE PETITIONER

John Michael McLeod
1900 Loomis Rd.
Jackson, Michigan 49201
(517)262-2796
In Propria Persona

QUESTION PRESENTED

Question 1.

Is the seizure of 100% of a person's wages without due process a violation of the IV, V & XIV amendments of the Constitution of the United States ?

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BRIEF FOR PETITONER

OPINIONS BELOW

The opinion of the Michigan Supreme Court appears to be missing the requirements by law. The Petitioner only received notices of Orders signed by the Clerk of the Michigan Supreme Court in thier Denials of the Petitioner to be heard. Despite requesting a signed opinion by a Judge as afforded in MCLA Article 6 Sec. 6, the Court ignored Petitioner's request. The following is the verbiage from the first denial of appeal: "On order of the Court, the application for leave to appeal the September 13, 2007 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court." The second denial read as follows: "On order of the Court, the motion for reconsideration of this Court's March 24, 2008 order is considered, and it is DENIED, because it does not appear that the order was entered erroneously.".

JURISDICTIONAL STATEMENT

The final judgement of the Michigan Supreme Court was entered on September 9, 2008. It was not signed by a Judge but instead consisted of a Notice signed by their Clerk. Notice was given to the Michigan Supreme Court of the intent to file appeal to the Supreme Court of the United States on September 22, 2008. The violations to Petitioner's Constitutional right to due process and the garnishment in excess of federal limit confer jurisdiction to review a writ of certiorari the judgments in question. The Court's jurisdiction rests on 28 USC § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following amendments to the United States Constitution states in pertinent part:

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..

Fifth Amendment: No person * * * shall be deprived of life, liberty, or property, without due process of law...

Fourteenth Amendment: No State shall * * * deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Revised Judicature Act 236 of 1961 secs 600.6231 & 4035 state:

Sec. 6231 – Garnishment without order prohibited and void; notice of order. The garnishment of any money due or to become due for the personal work and labor of the defendant upon a judgment made payable in installments either by the court order or by agreement of parties is prohibited, excepting upon a written order of the judge. Any writ of garnishment issued without the order is void. The order may be made following due notice to the defendant if installments are due.

Sec. 4035 – An attachement shall bind goods and cattels from the time they were attached.

An attachement of realty or any right or interest therein shall constitute a lien thereon, effective from the time when a certified copy of the attachment including a description of the realty shall be deposited in the office of the register of deeds in the county where the realty is situated.

26 USC Sec 6331 Levy and Distraint state in pertinent part: Notwithstanding * * * such continuous

levy shall attach to up to 15 percent of any specified payment due tothe taxpayer.

5 USC sec 706 Scope of review –

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.

Act 122 of 1941 sec 21(b) - If the dispute is not resolved within 30 days....shall give notice to the taxpayer.....The notice shall include the amount of the tax the department believes the taxpayer owes, the reason for that deficiency, *and a statement advising the taxpayer of a right to an informal conference*, the requirement of a written request by the taxpayer for the informal conference that includes the taxpayer's statement of the contested amounts and an explanation of the dispute, and the 30-day time limit for that request.

MCLA Article 6 sec. 6 states – Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the fcts and reasonds for each decision and reasons for each denial of leave to appeal. When a Judge dissents in whole or in part he shall give in writing the reasons for his dissent.

STATEMENT

In this case, the Petitioner's wages were seized for four continuous months. Despite the Petitioner's numerous early attempts to resolve the issue raised by the Michigan Department of Treasury, the agents of the State ignored the Petitioner. The Petitioner requested repeatedly for his due process right of a face to face informal conference through

certified mailings prior to seizure. In every instance, the State of Michigan ignored the Petitioner's requests. Ultimately, the State of Michigan seized the Petitioner's wages garnishing 100% of his wages for four months. This action ruined the Petitioner's financial standing destroying his family, credit and marriage.

Petitioner made numerous attempts to resolve this illegeal seizure in the State of Michigan Courts. These attempts were met with dismissals and the Petitioner was ultimately denied his right to be heard. Petitioner now requests the United States Supreme Court to hear this case in his pursuit of justice and fariness.

A.) Statutory Background

Regarding protection of property from seizure, both the Constitution of the United States and the Constitution of Michigan are clear in protecting against illegal seizure. The V and XIV amendments of the Constitution of the United States clearly prohibit seizure without due process whicle the IV protects against unreasonable seizures. Since the State of Michigan clearly denied the requests by the Petitioner for a due process hearing prior to seizure of the Appellan's wages, the violations of law are against the Constitutional rights of the Petitioner. Since Marbury v. Madison states:

> "Any.....thing in conflict or repugnancy with this United States Constitution is null and void of Law, it bears no power to enforce and no obligation to obey, it purports to settle as if it never existed in Law, for it was unconstitutional from it's very inception and not from the date so branding it unconstitutional.

The XIX amendment guarantees equal protection under the law. Therefore, Act 122 of 1941 must apply both to the Petitioner and to the State of Michigan.

A legal Warrant-Notice of Levy used in the seizure of wages must be signed by a Judge as required by law (MCR 3.101, MCR 2.105, ACT 236 of 1961 600.6231/.4035,

Snidach v Family Finance Corp., 395 U.S. In the Snidach case, the decision was clear:

> " The Idea of wage garnishment in advance of judgment, of trustee process, of wage attachment, or whatever it is called is a most inhumane doctrine. It complels the wage earner, trying to keep his family together, to be driven below the poverty level. The result is that a prejudgment garnishment of the Wisconsin type may as a practical matter drive a wage-earning family to the wall [395 U.S. 337, 342]. Where the taking of one's property is so obvious, it needs no extended argument to conclude that against notice and a hearing (Coe v. Armour Fertilizer Works, 237 U.S. 413, 423) this prejudgment garnishment procedure violates the fundamental principles of due process.".

The seizure of more than 15 percent of an Petitioner's wages is not supported by any of the garnishment laws. 26 USC § 6331 allows only up to and not in excess of 15% of any specified payment due. Since the State's seizure far exceeded what is allowed by law, it was done with clear intent to violate the rights of the Petitioner. All attempts to resolve these violations after the fact were met with rejection by the Courts of Michigan.

The Petitioner is guaranted the right to contest the demand for payment by the state as is allowed by GREGORY vs. HALVERING, 293 U.S. 465, (1935). By denying an Petitioner an Informal Conference prior to seizure, the Michigan Department of Treasury would make it imposible for a legal resolution to be found prior to seizure.

B.) Factual Background

The State of Michigan seized 100% of Petitioner's wages beginning September 1, 2006 through December 31, 2006. 09-Apr-07 Petitioner filed suit in Michigan Court of Claims against the Michigan Department of Treasury and three named agents for fraud, denial of due process and for an

appeal from a tax hearing determination held only after illegal seizure of wages (January of 2007). Michigan Department of Treasury issued levy of 100% of wages in violation of federal garnishment limit laws (26 USC § 6331 (h)) in a demand for payment and seized Petitioner's wages in violation of Petitioner's Constitutional rights of due process. Petitioner informed the Court that the State failed to notify and give a hearing prior to seizure of property and seized 100% of his wages. In error, the Petitioner's reference to an appeal from the Tax Tribunal and not the Informal Hearing that was held after the fact lead to dismissal.

In the Court of Claims, the Petitioner filed a Motion for Default Judgment as the Defendants failed to answer timely taking 29 days for their first response and 35 days for their second. The time to answer was 21 days (MCR 2.108 & Court of Claims Act 600.6434). The Court of Claims did not accept this Motion and instead claimed that the Defendants answers were timely. Despite the clear violations against the Petitioner in the seizure prior to a hearing and seizure at 100% of wages, the Court of Claims dismissed the Petitioner's case as appealing to the wrong court. When Petitioner filed a motion for new hearing on 02-Aug-08, the Court sent notice to the Petitioner dated 16-Aug-07 that the Order of court dismissing the case on 25-Jul-07 was the final order.

The cases proceeded as follows:

C. Proceedings in Michigan Court of Claims

1. Court of Claims dismisses initial case on 25-Jul-07.
2. Petitioner filed request for new hearing in Court of Claims on 02-Aug-07
3. Petitioner received Notice from Court of Claims on 16-Aug-07 (see exhibit C1) stating that the final order disposing the case was 25-Jul-07.

D. Proceedings in Michigan Court of Appeals

4. Petitioner filed an Appeal to Michigan Court of Appeals on 30-Aug-07.
5. 13-Sept-07 the Court of Appeals dismissed the Appeal as being filed late.
6. 24-Aug-07 Petitioner filed a motion to reconsider based on the date of the request for new hearing and the notice dated 16-Aug-07.
7. 24-Sept-07 the Court of Claims recognized their oversight of the request for new hearing and held an Ex parte hearing without notification to the Petitioner to present the correction of errors (notify the court that the appeal should have been from informal conference and not from the Tax Tribunal). Petitioner then received an order denying Plaintiff's motion for new hearing as being "denied for the reason that this Court is not convinced that pursuant to MCR 2.119(F)(3) a palpable error has occurred and that a different disposition of the motion must result from a correction of an error."
8. 04-Oct-07 the Court of Appeals dismissed the Appeal now as being filed too early based on the FINAL FINAL decision from the Court of Claims dated 24-Sept-07.
9. 08-Oct-07 Petitioner requested the Court reconsideration because of the lower court errors should not be used against the Petitioner (see Haines v. Kerner).
10. 23-Oct-07 Petitioner received an order from the Court of Appeals denying Motion for Reconsideration.
11. 31-Oct-07 Petitioner filed a Motion to Reinstate the case.
12. 02-Nov-07 the Court of Appeals Clerk answered "The Clerk's Office is precluded form accepting this motion under MCR 7.215(I)(3).

E. Proceedings in Michigan Supreme Court

13. 04-Dec-07 Petitioner filed in the Michigan Supreme Court for his day in court.

14. 24-Mar-08 The Michigan Supreme Court denied the Petitioner's Appeal from the Court of Appeals as: "On order of the Court the application for leave to appeal is...DENIED, because we are not persuaded that the questions presented should be reviewed by this Court". This order was not signed by a Judge but instead by the Clerk. It was not a written statement as required by the Michigan Constitution.
15. 02-Apr-08 Petitioner filed a Motion for Reconsideration followed on 07-Apr-08 with an Amended Motion for Reconsideration. In this Motion Petitioner requested a signed opinion by a Judge which is required by law (Michigan Constitution Article 6 sec 6).

F. Decision from Michigan Supreme Court

16. 09-Sept-08 Petitioner received a DENIAL for motion for reconsideration "...as it does not appear that the order (entered 24-Mar-08) was entered erroneously.". Again, this was not an opinion signed by a Judge but a notice signed by their Clerk.

Petitioner now comes before the Supreme Court of the United States to address the wrongs that have befell him in the State of Michigan.

ARGUMENT

I. THE MICHIGAN DEPARTMENT OF TREASURY FAILED TO COMPLY WITH CONSTITUTIONAL, STATE AND FEDERAL LAWS

When agents of the Michigan Department of Treasury failed to notify and offer an informal conference, they did so in violation of their existing procedural laws. Furthermore, upon the Petitioner's repeated requests for an informal conference to avoid denial of due process, their failure to comply proves that their actions were not by ignorance but with clear intent. Petitioner's exposure of Act 122 of 1941 sec 21(b) to those agents of the State of Michigan was law that those agents were already using against the Petitioner. The X1V amendment affords equal protection under the law which was not adhered to in the case at hand. There is no excuse for their actions against the Petitioner. Since Gregory vs. Halvering, 293 U.S. 465 (1935) clearly gives the Petitioner the right "to avoid those taxes by any lawful means", ignoring Petitioner's legal arguments constitutes criminal intent. During the Informal Conference held after the seizure of Petitioner's wages, the State ignored all presented evidence by the Petitioner. This evidence consisted of United States Supreme Court cases, USC, CFR, MCL and precedent court cases. The agents of the State of Michigan had already made a decision against the Petitioner prior to the hearing as their presentation at that conference presented a ruling against the Petitioner. The agents of the State showed presumption of the determination as they had not yet heard the Petitioner's legal argument. Since the XVI amendment affords the Petitioner equal protection under the

law, the laws that were being used against the Petitioner should apply equally to the State. Furthermore, in the final determination sent to the Petitioner, the determination did not meet the standard expressed in Federal Maritime Commission vs. South Carolina State Ports et al. Certiorari tothe United States Court of Appeals May 28, 2002.

> "Federal administrative law requires that agency adjudication contain many of the same safeguards as are available in the judicial process. The proceedings are adversary in nature. They are conducted before a trier of fact insulated from ploitical influence. A party is intitled to present his case by oral or documentary evidence, and the transcript of testimony and exhibits together with the pleadings constitutes the exclusive record for decision. The parties are entitled to know the findings and conclusions on all the issues of fact, law, of discretion prestneted on the record."

Petitioner did not receive a detailed conclusion in response to any of the legal defenses presented. The actions of the agents involved is contrary to their sworn oaths of office to operate within the Constitution (see Bivens vs. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

The garnishment at 100% of Petitioner's wages clearly was in violation of MCR 3.101, Revised Judicature Act 236 of 1961 §§ 6231 & 4035 and 26 USC § 6331. The Warrant-Notice of levy not being signed by a Judge was also a violation of law as Snidach vs. Family Finance Corp., 395 U.S. states. From the record it is factual that the Petitioner was not informed of his right to an informal conference by notice as required by Act 122 of 1941 sec 2(b). Also, it is factual that Petitioner's request for an informal conference prior to seizure of his property was denied. From the actions by the Michigan Department of Treasury agents in not following procedures, it is clear that due process was denied

to the Petitioner.

II. THE MICHGAN COURT OF APPEALS FAILED TO COMPLY WITH THE CONSTITUTION IN HEARING THE CASE AS PRESENTED

Petitioner is not a trained attorney by appearing before the Courts In Propria Person. By Haines v. Kerner, ET AL, 404 U.S. ,519, 92 S. Ct. 594, 30 L.Ed. 2d 625 the Courts cannot hold the Petitioner to the same standard as a schooled attorney. In the Appeal filed, it is clear that the lower court failed to recognize the Petitioner's request for a new hearing to correct errors in the hearing which dismissed the case on 25-Jul-07. When the Petitioner received the Notice dated 16-Aug-07 in response to his submitted request for new hearing, the notice stated the final order was issued on 25-Jul-08. For the Court of Appeals to initially state that they were dismissing for the Petitioner filing late was an error. After the ex-parte hearing was held in the Court of Claims in response to Petitioner's request for new hearing, the FINAL FINAL order was issued dated 24-Sept-07. The Petitioner could not have known based on the earlier notice dated 16-Jul-08 that this was not indeed the Final Order allowing the 21 days to submitt an Appeal to the Court of Appeals (MCR 7.101(B). To deny the Petitioner reinstatement of the case would appear to be another denial to be heard by this self represented Petitioner.

III. THE MICHGAN SUPREME COURT FAILED TO COMPLY WITH THE CONSTITUTION IN HEARING THE CASE AS PRESENTED

The first denial from the Michigan Supreme Court stated; "..is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. Since the violations presented to the Court are

mainly Constitutional in the clear denial of due process (IV and XIV amendments) along with seizure of property in excess of federal garnishment laws (V amendment), this Petitioner sees no legal reason to be denied. A strict rule of thumb for Appeal is a violation of any any all Constitutional rights. Also, the denials sent to the Petitioner did not comply with MCLA Constitution Article 6 Sec. 6.

> Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a Judge dissents in whole or in part he shall give in writing the reasons for his dissent.

The orders received by the Petitioner were signed by the Clerk of the Michigan Supreme Court, and did not give a detailed reason for the denials. First and foremost, the violations presented in the case are strong Constitutional infractions that were committed not by ignorance or accident. Second, the rejection of hearing Constitutional issues presented to any Court contradicts their sworn oath to the Constitution.

IV. ALL PARTIES INVOLVED VIOLATED THEIR OATHS OF OFFICE

All State employees involved in this issue before the United States Supreme Court have taken a sworn oath to the Constitution. They are required to operate within the law, both Federal and State. Since the agents of the Michigan Department of Treasury were informed of the request by the Petitioner for an informal conference as afforded by Act 122 of 1941 sec 21(b), the seizure of property without due process stands a fact. Their actions can only be considered as reckless (Bivens vs. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). Also, their disregard of garnishment laws cannot be excused. The

actions of these agents destroyed the Petitioner's credit, family and marriage.

V. THIS COURT SHOULD DIRECT THE MICHIGAN SUPREME COURT TO GRANT A NEW TRIAL

If the Court agrees with the submission that Petitioner's IV, V and XIV rights have been violated along with violation in the garnishment at 100% which is in excess of the legal limit, the Petitioner requests that the United States Supreme Court accept this case as meeting the requirement for writ of certiorari. Petitioner asks that the United States Supreme Court remand this case back to the Michigan Supreme Court to be heard in oral argument by the Petitioner.

CONCLUSION

Since all legal arguments were presented by the Petitioner throughout this issue to numerous agents of the State of Michigan prior to illegal seizure of Petitioner's property, the denial of this fact is all but impossible by those agents involved. This is proof enough of denial of due process. Since the State did not follow procedures set out in law (Bushmann v. Schweiker, 676 F.2d 352 (1982)), and since the Petitioner notified the state of the proper procedures prior to seizure of wages, the State acted with clear criminal intent in their actions. All documentation submitted by the Petitioner to the Michigan Department of Treasury in an attempt to resolve this issue was via certified mail. Since this is legal evidence, it cannot be denied unless the Courts do not allow the Petitioner to be heard. In the cases presented before this United States Supreme Court, it appears that this may be the Michigan Courts intent. The Petitioner only asks for his Constitutional right to be heard and resolve the issues presented (Ruff v. Issac, Michigan Court of Appeals, (case no. 192615) Oct 17, 1997)..

APPENDIX

Michigan Court of Claims Case No. 07-34-MT

25-Jul-07 Order:

The Court, after reading all of the filed pleadings regarding Defendant's Motion for Summary Disposition, pursuant to MCR 2.116(C)(4), and (8), and after hearing oral arguments by parties at a hearing held on July 25, 2007, at 1:30 p.m., now: GRANTS DEFENDANT"S MOTION FOR SUMMARY DISPOSITION:

1. This Court lasks subject matter jurisdiction over Plaintiff's adtion pursuant to MCR+ 2.116(C)(4).
2. The Court grants summary disposition in favor of the Defentant based on all additional reasons stated by the Court on the record.

This ORDER is a final order disposing all of claims in the case, and Plaintiff's cased is dismissed with prejudice.

16-Aug-07 : Official Circuit Court Notice

Order granting DF's motion for summary disposition – This is the final order disposing alll claims in this case – Pl's case dismissed with prejudice (signed by Judge Manderfield on 7/25/07).

24-Sept-07: ORDER DENYING PLAINTIFF's MOTION FOR REHEARING OR RECONSIDERATION

...It is herby ordered that Plaintiff's motion for rehearing or reconsideration of this Court's July 25, 2007 order granting Defendant's motion for summary disposition is DENIED for the reason that this Court is not convinced that pursuant to MCR 2.119(F)(3) a palpable error has occurred and that a different disposition of the motion must result from a correction of an error.

Michigan Court of Appeals Case No. 280282

13-Sept-07: ORDER

The claim of appeal filed August 30, 2007 is DISMISSED

for lack of jurisdiction because Petitioner failed to file the claim within 21 days ofthe July 25, 2007 entry of the final order granting summary disposition as required by MCR 7.204(A)(1)(a)

23-Oct-07: ORDER
The Court, acting under MDR 7.203(F)(2), orders that the motion for reconsideration is DENIED. The claim of appeal filed on August 30, 2007, was properly dismissed, as there was no order entered denying the motion for reconsideration when this claim of appeal was filed.

Michigan Supreme Court Case No. 135380
24-Mar-08: Order
On order of the Court, the application for leave to appeal the September 13, 2007 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.
09-Sept-08: Order
On order of the Court, the motion for reconsideration of this Court's March 24, 2008 order is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

CASES
Bivens v. Six Unknown Fed Narcotics Agents,
403 US 388 (1971)
"It is important to realize tha no individual in government has the authority to operate outside his authority. If he knowingly operated outside of his anthority, he can be sued in his individual capacity."

Bushmann v. Schweiker, 676 F.2d 352 (1982)
"A regulation is invalid if the agency fails to follow procedure required by the Administrative procedures Act, (5 U.S.C.)

Coe v. Armour Fertilizer Works, 237 U.S. 413, 423
"prejudgment garnishment procedure violates the fundamental principles of due process."

Federal Maritime Commission vs. South Carolina State Ports et al. Certiorari tothe United States Court of Appeals May 28, 2002. "Federal administrative law requires that agency adjudication contain many of the same safeguards as are available in the judicial process. The proceedings are adversary in nature. They are conducted before a trier of fact insulated from ploitical influence. A party is intitled to present his case by oral or documentary evidence, and the transcript of testimony and exhibits together with the pleadings constitutes the exclusive record for decision. The parties are entitled to know the findings and conclusions on all the issues of fact, law, of discretion prestneted on the record."

GREGORY vs. HALVERING, 293 U.S. 465, (1935)
"The Legal Right of the Taxpayer to decrease the amount of what otherwise would be his/ her taxes, or altogether avoid those taxes by ANY Lawful means, which the Law permits CAN NOT be doubted, as it is his/ her Right to so do.

Haines v. Kerner, ET AL, 404 U.S. ,519, 92 S. Ct. 594, 30 L.Ed. 2d 625
.....allegations such as the pro se asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence.
Marbury vs. Madison, 5 U.S. 137 (1803)

> "Any.....thing in conflict or repugnancy with this United States Constitution is null and void of Law, it bears no power to enforce and no obligation to obey, it purports to settle as if it never existed in Law, for it was unconstitutional from it's very inception and not from the date so branding it unconstitutional.

Ruff v. Issac, Michigan Court of Appeals, (case no. 192615) Oct 17, 1997
"On appeal the Plaintiff"'s assert that because the IRS failed to adhere to Federal Statutorily prescribed proceedural notice provisions. Plaintiff's have superior title to the property. We reverse and remand."

Snidach v. Family Finance Corp., 395 U.S. 337 (1969)
" The Idea of wage garnishment in advance of judgment, of trustee process, of wage attachment, or whatever it is called is a most inhumane doctrine. It complels the wage earner, trying to keep his family together, to be driven below the poverty level. The result is that a prejudgment garnishment of the Wisconsin type may as a practical matter drive a wage-earning family to the wall [395 U.S. 337, 342]. Where the taking of one's property is so obvious, it needs no extended argument to conclude that against notice and a hearing (Coe v. Armour Fertilizer Works, 237 U.S. 413, 423) this prejudgment garnishment procedure violates the fundamental principles of due process."

STATUTES AND REGULATIONS

5 USC § 706 Scope of review -
To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or unreasonably delayed; and
(2) hold unlawful and set aside agency action, findings, and conclusions found to be--
(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law
(B) contrary to constitutional right, power, privilege, or immunity;
(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
(D) without observance of procedure required by law;
(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.
In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

26 USC § 6331 - Levy and Distraint

> Notwithstanding * * * such continuous levy shall attach to up to 15 percent of any specified payment due tothe taxpayer.

28 USC § 1257 – State courts; certiorari (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari....

Act 122 of 1941 sec 21(b)

If the dispute is not resolved within 30 days....shall give notice to the taxpayer.....The notice shall include the amount.....the department believes the taxpayer owes, the reason for that deficiency, *and a statement advising the taxpayer of a right to an informal conference*, the

requirement of a written request by the taxpayer for the informal conference that includes the taxpayer's statement of the contested amounts and an explanation of the dispute, and the 30-day time limit for that request.

Court of Claims Act 600.6434 - Pleadings, service, copies

(4) – With each paper, including the original complaint filed by the claimant, 1 copy of each shall be furnished to the clerk *who shall immediately transmit the copy to the attorney general.*

Revised Judicature Act of 1961
Act 236 of 1961

Sec 600.6231 – Garnishment without order prohibited and void; notice of order. The garnishment of any money due or to become due for the personal work and labor of the defendant upon a judgment made payable in installments either by the court order or by agreement of parties is prohibited, excepting upon a written order of the judge. Any writ of garnishment issued without the order is void. The order may be made following due notice to the defendant if installments are due.

Sec. 4035 – An attachement shall bind goods and cattels from the time they were attached. An attachement of realty or any right or interest therein shall constitute a lien thereon, effective from the time when a certified copy of the attachment including a description of the realty shall be deposited in the office of the register of deeds in the county where the realty is situated.

MCR 2.105 – (g)(8) The service process may be kade on an officer having substantially the same duties as those named or descriged above....

MCR 2.108(a) Time for Service and Filing of Pleadings. (1) A defendant must serve and file an answer or take other

action permitted by law or these rules within 21 days after being served with the summons and a copy of the complaint in Michigan in the manner provided in MCR 2.108 (b) – Time for Filing Motion in Response to Pleading. A motion raising a defense or an objection to a pleading must be served and filed within the time for filing the responsive pleading or, if no responsive pleading is required, within 21 days after service of the pleading to which the motion is directed.

MCR 2.116(C)(4) – Grounds – the court lacks jurisdiction of the subject matter

MCR 3.101- Garnishment After Judgment:
(F) Service of Writ – The writ of garnishment and the disclosure form, and a copy of the writ for each principal defendant, must be served on the garnishee defendant in the manner provided for the service of a summons and complaint MCR 2.105 within 14 days after the writ was issued.

MCR 7.215(I)(3)(I) Reconsideration.
(3) The clerk will not accept for filing a motion for reconsideration of an order denying a motion for reconsideration.

MCR 7.101 (B) Time for Taking Appeal.
(1) Appeal of Right. Except when another time is prescribed by statute or court rule, an appeal of right must be taken within
(a) 21 days after the entry of the order or judgment appealed from; or
(b) 21 days after the entry of an order denying a motion for new trial or judgment notwithstanding the verdict, a motion for rehearing or reconsideration, or a motion for other postjudgment relief, if the motion was filed within

the original 21-day period. A motion for rehearing or reconsideration of a motion mentioned in subrule (B)(1)(b) does not extend the time for filing a claim of appeal, unless the motion for rehearing or reconsideration was itself filed within the 21-day period.

MCR 7.204(A)(1)(3) – An appeal of right in a civil action must be taken within 21 days

MCLA Constitution Article 6 Sec. 6 Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a Judge dissents in whole or in part he shall give in writing the reasons for his dissent.

Respectfully submitted.

John Michael McLeod
1900 Loomis Rd.
Jackson, Michigan 49201
(517)-262-2796
In Propria Persona

No. 08-1105

IN THE SUPREME COURT OF THE UNITED STATES

John Michael McLeod,

Petitioner,

v.

MICHIGAN DEPARTMENT OF TREASURY

Respondent,

On Writ Of Certiorari to
The Supreme Court of Michigan

PETITION FOR REHEARING

John Michael McLeod
1900 Loomis Rd.
Jackson, Michigan 49201
(517)262-2796
In Propria Persona

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Knowing that the state of Michigan seized 100% of this Petitioners wages without legal court order while denying Petitioner's repeated requests for a due process hearing prior to seizure:

I. THE QUESTION PRESENTED:

Can the Supreme Court deny hearing a case involving blatant denial of due process by a state without denying the Petitioner due process themselves?

CONCLUSION..... 5

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CONSTITUTION of the UNITED STATES
MICHIGAN CONSTITUTION

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SUPREMACY CLAUSE – specifies that the Constitution itself, and the federal statutes enacted pursuant to the Constitution, would be the supreme "Law of the land"

The following amendments to the United States Constitution states in pertinent part:

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..

Fifth Amendment: No person * * * shall be deprived of life, liberty, or property, without due

process of law...
Fourteenth Amendment: No State shall * * *
deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Revised Judicature Act 236 of 1961 secs 600.6231 & 4035
state:

Sec. 6231 – Garnishment without order prohibited and void; notice of order. The garnishment of any money due or to become due for the personal work and labor of the defendant upon a judgment made payable in installments either by the court order or by agreement of parties is prohibited, excepting upon a written order of the judge. Any writ of garnishment issued without the order is void. The order may be made following due notice to the defendant if installments are due.

Sec. 4035 – An attachement shall bind goods and cattels from the time they were attached.
An attachement of realty or any right or interest therein shall constitute a lien thereon, effective from the time when a certified copy of the attachment including a description of the realty shall be deposited in the office of the register of deeds in the county where the realty is situated.

26 USC Sec 6331 Levy and Distraint state in pertinent part: Notwithstanding * * * such continuous levy shall attach to up to 15 percent of any specified payment due tothe taxpayer.

5 USC sec 706 Scope of review –

> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.

Act 122 of 1941 sec 21(b) - If the dispute is not resolved within 30 days....shall give notice to the taxpayer.....The notice shall include the amount of the tax the department believes the taxpayer owes, the reason for that deficiency, *and a statement advising the taxpayer of a right to an informal conference*, the requirement of a written request by the taxpayer for the informal conference that includes the taxpayer's statement of the contested amounts and an explanation of the dispute, and the 30-day time limit for that request.

MCLA Article 6 sec. 6 states – Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the fcts and reasonds for each decision and reasons for each denial of leave to appeal. When a Judge dissents in whole or in part he shall give in writing the reasons for his dissent.

PETITION FOR REHEARING

Pursuant to Rule 44.2, the Petitioner John Michael McLeod respectfully petitions the Supreme Court of the United States for a rehearing of its decision denying John Michael McLeod's Petition for a Writ of Certiorari. This Petiton is not meant to as a delay, but as an ongoing pursuit of Justice.

John Michael McLeod acting Pro Se petitions this Court on the grounds that Marbury vs. Madison, 5 U.S. 137 (1803) as not being overturned mandates the Constitution stands as the law of the land. The Supremacy Clause specifies that the Constitution and Federal statutes enacted pursuant to the Constitution would be the supreme "law of the land". That being the case, any denial of a clear constitutional violation presented to a court would be a denial of due process.

Since Justice Clarence Thomas stated as follows, in a 2004 dissent:

> As an initial matter, it is possible that the Due Process Clause requires only "that our Government must proceed according to the law of the land' – that is, according to written consitutional and statutory provisions." In re Winship, 397 U.S. 358, 382 (1970).

The madate is clear that both federal and state governments cannot deny due process without violating the Constitution.

What is Due Process? I rely on this Honorable United States Supreme Court for that definition:

Due Process - From this U.S. Supreme Court, Procedural Due Process is defined:

> The concept of due process derives from the Magna Carta (1215)..... The Fifth Amendment of the Constitution requires the the federal government not deprive any person of "life, liberty, or property without due process of law." The same language is included in the Fourteenth Amendment as a constraint on the states. The central aim of due process doctrin is to assure fair procedure when government imposes a burden on an individual. The doctrin seeks to prevent arbitrary government, avoid mistaken deprivations.....

Due Process from the US Government Guide:

> The 5th and 14th Amendments to the U.S. Constitution guarantee individuals the right of due process of law, which is often referrred to simply as "due process." The 5th Amendment states, "No person shall be....deprived of life, liberty, of property, without due process of law." The 14th Amendment states, "No state shall...deprive any person of ....property, without due process of law." These two due process clauses provide that the government must act fairly, according to established legal procedures, with regard to a person's rights to life, liberty, and property.

> Procedural due process – the idea that the government must follow fair and generally acepted legal procedures in its actions agains individuals.

Clearly from this Courts own definition, due process is guaranteed as a protection against illegeal siezure of property. In the case at hand the evidence is clear that the state of Michigan has acted in violation of the Federal and Michigan Constitutions and garnishment laws. This Petitioner pleaded repeatedly for his right to a due process hearing (Act 122 0f 1941 sec 21b)(Appendix) only to be ignored with the ultimate seizure of 100% of his wages in excess of garnishment limits without a legal court order.

The U.S. Constitution's separation of the legislative, executive, and judicial branches of government, the checks and balances of each branch against the other, and the explicit guarantees of individual liberty were all designed to strike a balance between authority and liberty. This guarantee was broken in the Michigan Court of Claims when this Petitioner's Motion for Default Judgment was denied (Respondent filed late) along with denying any appeals that followed. Since the State did not follow procedures set out in law (Bushmann v. Schweiker, 676 F.2d 352 (1982)), and since the Petitioner notified the state of the proper procedures prior to seizure of property requesting numerous times for a due process hearing, the State acted with full awareness in their actions. The

Petitioner only asks for his Constitutional right to be heard and resolve the issues presented with the return of all seized property (Ruff v. Issac, Michigan Court of Appeals,
(case no. 192615) Oct 17, 1997).

I pray that all of the Justices will review the above quote by Justice Clarence Thomas along with this Court's guarantee of due process, the evidence at hand, and rule on this case accordingly in good conscience. This uneducated in law Pro Se Petitioner pleads that both Federal and State Constitutions and statutes have been ignored by the Michigan Courts in the Petitioner's attempt to gain the return of property which was taken illegally from the Petitioner.

The Petitioner makes no request that this court has not already guaranteed regarding the rights to due process. You, the Justices of this United States Supreme Court have declared that denial of due process is unjust. The Constitution in fact guarantees the right to due process. All the Petitioner asks is that all of the Justices review thouroughly the claims made by this Petitioner and reconsider the denial of Writ of Certiorari. As our Constitution and Declaration of Independence are founded on Godly principals (In God We Trust is on our coins), I pray to God that Justice is served in this case.

CONCLUSION

For the above reasons, this Petitioner respectfully requests that this Court grant his Petition for Rehearing and grant a Writ of Certiorari forcing the Michigan Supreme Court to hear the Petitioner's case in full along with explaining why the original case was dismissed without an opinion as required
by law (MCLA Article 6 sec. 6).

Respectfully submitted.

John Michael McLeod
1900 Loomis Rd.
Jackson, Michigan 49201
(517)-262-2796
In Propria Persona

APPENDIX

Constructive Notice of Demand and Fault/Default

Filed in Jackson County Register of Deeds 16-Jun-07

This notice was included in the Michigan Supreme Court documents and lists all the certified mailing attempts to correspond with Michigan Department of Treasury agents in an attempt to resolve the issue. Listed in items 6, 9, 16, 18, 20, 21 and 26 are repeated attempts of requesting a due process hearing which is guaranteed by law in Act 1220 1941 sec 21b and which were ignored by the state.

Listed in item 27: John Michael Mcleod responded via notarized and certified mail #7004 2510 0007 1469 9010 dated 22-Sept-06 to an aknowledgement of Request for Informal Conference dated 12-Sept-06 and WARRANT-NOTICE OF LEVY dated 21-Aug-06 from State agent Mary G. MacDowell. Included in certified mail were legal arguments stating fraud by the state as the NOTICE OF LEVY was not a legal levy. Mary G. MacDowell was requested to respond to 1.) all legal arguments, 2.) each and every point of enclosed statement of facts, and 3.) to sign and return enclosed affidavit of authourity. John Michael McLeod states for the record that no response was ever received from Mary G. MacDowell.
The above action was a legal default by Mary G. MacDowell.